

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

EDDY LEE SPEARMAN	§	
VS.	§	CIVIL ACTION NO. 9:13-CV-290
CHARLES W. BELL, <i>et al.</i> ,	§	

MEMORANDUM ORDER OVERRULING OBJECTIONS AND ADOPTING
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Plaintiff, Eddy Lee Spearman, an inmate confined at the Eastham Unit of the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se* and *in forma pauperis*, filed this civil rights action pursuant to 42 U.S.C. § 1983 against defendant Jimmy Locander.¹

The Court referred this matter to the Honorable Keith Giblin, United States Magistrate Judge, at Lufkin, Texas, for consideration pursuant to applicable laws and orders of this Court. The Magistrate Judge recommends defendant Locander's motion to dismiss as to plaintiff's official capacity claims be granted but denied as to plaintiff's claims of deliberate indifference.

The Court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such order, along with the record, and pleadings. Plaintiff filed objections to the Magistrate Judge's Report and Recommendation. This requires a de novo review of the objections in relation to the pleadings and applicable law. *See* FED. R. CIV. P. 72(b).

After a careful review, the Court finds the objections lacking in merit. As outlined by the Magistrate Judge, plaintiff's claims against defendant Locander in her official capacity are barred by Eleventh Amendment immunity. *See Buckhannon Bd. and Care Home, Inc. v. W. Va. Dep't of Health and Human Res.*, 532 U.S. 598, 609 n. 10 (2001). However, plaintiff's claims against defendant Locander in her individual capacity for deliberate indifference shall proceed.

¹Plaintiff's claims against defendants Bell, Erwin, and Coleman were dismissed by Memorandum Order and Partial Judgment on January 5, 2015.

ORDER

Accordingly, the objections of plaintiff are **OVERRULED**. The findings of fact and conclusions of law of the Magistrate Judge are correct and the report of the Magistrate Judge is **ADOPTED**.

SIGNED this 22nd day of September, 2015.

A handwritten signature in black ink, reading "Michael H. Schneider", written over a horizontal line.

MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE